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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,795	06/19/2001	Ronald J. Scherer	3616.177US12	4387
23552	7590	10/08/2003		
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				
EXAMINER LEE, JONG SUK				
ART UNIT		PAPER NUMBER		
3673				

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/884,795

Applicant(s)

SCHERER ET AL.

Examiner

Jong-Suk (James) Lee

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-39,55,62-64 and 70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-39,55,62-64,70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

1. The amendment filed September 22, 2003 has been entered.

2. The terminal disclaimer filed on September 22, 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,321,740 has been reviewed and is accepted. The terminal disclaimer has been recorded.

3. Upon further consideration, allowable subject matter indicated in the previous office action mailed on June 30, 2003 has been withdrawn in view of the applicant's cited reference to US 3,120,842. Therefore, the Finality of the previous office action mailed June 30, 2003 has been withdrawn and new ground of rejection based on the above-mentioned reference is as follows.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the

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1 manner in which the invention was made.

2 This application currently names joint inventors. In considering patentability of the claims
3 under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was
4 commonly owned at the time any inventions covered therein were made absent any evidence to
5 the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor
6 and invention dates of each claim that was not commonly owned at the time a later invention was
7 made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35
8 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).
9

10 5. Claims 37-39, 55, 62-64 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable
11 over Cox et al. (US 3,120,842).

12 Cox et al. discloses a shearing/splitting apparatus and inherent method of shearing a
13 workpiece, the method comprising of providing first and second block splitting assemblies
14 opposed each other, each including a plurality of splitting members (60, 70) positioned to define a
15 splitting line and to engage a workpiece (24) such as a slab of rock or other material, to split it
16 along the splitting line when the splitting assemblies being activated and the splitting assemblies
17 each including a plurality of projections (80) adjacent the splitting line on both sides, the
18 projections being positioned to travel into the workpiece to break away portions of the workpiece
19 when the splitting assembly is activated, aligning a masonry workpiece with the splitting line and
20 activating the first and second opposed splitting assemblies in concert (see Figs. 1-6; col.2, lines
21 43-72; col.3, lines 1-72; col.4, lines 38-75; col.5, lines 1-3).

22 Although Cox et al. fails to specifically disclose the workpiece is a masonry workpiece, it
23 would have been obvious to one of the ordinary skill in the art at the time the invention was made

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1 to use the workpiece as masonry block or equivalent instead of the rock in order to split the
2 masonry block to obtain the desired dimension for the blocks.

4 **Conclusion**

5 6. Applicant's amendment, filed May 20, 2003, necessitated the new ground(s) of rejection
6 presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §
7 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

8 A shortened statutory period for reply to this final action is set to expire THREE
9 MONTHS from the mailing date of this action. In the event a first reply is filed within TWO
10 MONTHS of the mailing date of this final action and the advisory action is not mailed until after
11 the end of the THREE-MONTH shortened statutory period, then the shortened statutory period
12 will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR
13 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,
14 will the statutory period for reply expire later than SIX MONTHS from the date of this final
15 action.

16 7. Any inquiry concerning this communication or earlier communications from the examiner
17 should be directed to Jong-Suk (James) Lee whose telephone number is (703) 308-6777. The
18 examiner can normally be reached between the hours of 6:30 AM to 3:00 PM Monday thru
19 Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

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1 Heather C. Shackelford, can be reached on (703) 308-2978. The fax phone number for this
2 Group is (703) 305-3597.

3 Any inquiry of a general nature or relating to the status of this application or proceeding
4 should be directed to the Group receptionist whose telephone number is (703) 308-2168.

5
6
7 J. Lee /jjl
8 October 6, 2003
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Jong-Suk (James) Lee
Primary Examiner
Art Unit 3673